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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,320	12/29/2003	Craig Kennedy	7432.185US01	1719
25315	7590	08/09/2005	EXAMINER	
BLACK LOWE & GRAHAM, PLLC 701 FIFTH AVENUE SUITE 4800 SEATTLE, WA 98104			PEDDER, DENNIS H	
			ART UNIT	PAPER NUMBER
			3612	

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/749,320

Applicant(s)

KENNEDY ET AL.

Examiner

Dennis H. Pedder

Art Unit

3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 11-13, 15-21 and 33-48 is/are pending in the application.
- 4a) Of the above claim(s) 11, 12, 15-17 and 33-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 13, 18-21 and 39-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The specification is objected to because reference numerals 28A, B and Wheel 80B do not correspond to the drawings. Correction is required.
2. A substitute specification is required pursuant to 37 CFR 1.125(a) because the extensive modifications required to the as filed specification to correct the problems listed above are too numerous to enter by individual correction. The proposed amendment of 7/25/2005 to the specification is not entered as not in conformance to Rule 121 in that no specific paragraph (121(b)(1) is listed, none being marked, and no section headings 121(b)(2) is indicated.

A substitute specification must not contain new matter. The substitute specification must be submitted with markings showing all the changes relative to the immediate prior version of the specification of record. The text of any added subject matter must be shown by underlining the added text. The text of any deleted matter must be shown by strike-through except that double brackets placed before and after the deleted characters may be used to show deletion of five or fewer consecutive characters. The text of any deleted subject matter must be shown by being placed within double brackets if strike-through cannot be easily perceived. An accompanying clean version (without markings) and a statement that the substitute specification contains no new matter must also be supplied. Numbering the paragraphs of the specification of record is not considered a change that must be shown.

3. Claims 11-12, 15-17,33-38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/25/2005.

Drawings

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the breakaway connectors, claims 4, etc., coupled without tools, claims 5, etc., must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-5, 13, 18-21, 39-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant's repeated use of the phrase "adapted" and "adapted to" is indefinite. The claims have no structure or means for these various functions as claimed. As a result, a potential infringer would not be able to determine his status regarding the claims.

Claims 5, 21, 42, 47 contain an indefinite negative limitation in "without", rendering determination of infringement in doubt.

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 3, 19, 40, 45 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. No support is found for the claim to "adjustable in any direction ...comprising rotationally". Applicant is required to show as filed support for this claim limitation or cancel in response to this office action.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-3, 13, 18-19, 39-40, 43-45, 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Mortvedt et al.

Mortvedt et al. is an all terrain vehicle in a tractor, capable of traversing multiple terrains. Mortvedt et al. has fender body 20/56, wheel 16, first mounting assembly 34, second mounting assembly 38, the assemblies positioned at different distances from the wheel 16. The fender body is adapted at 52, 48, 50, 22, 24 to be coupled to one of members 38 and 34 as well as both members 38, 34.

See frame 12, claim 2.

As to claim 3, Mortvedt et al. discloses holes 18 for horizontal adjustment, rotational positioning of member 38 at 42 for both horizontal, vertical and rotational adjustment and set bolts 60 with tubes 48, 50 for lateral adjustment.

As to claim 18, the fender 26/56 covers the wheel 16 in different positions in any of the locations listed.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claims 4, 20, 41, 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mortvedt et al. in view of either Polz et al. or Dent.

Mortvedt et al. uses conventional bolts 34, 42. Both Polz et al. and Dent teach that bolts may be made to breakaway under severe forces in order to limit resulting damage. The references to Polz et al. and Dent are deemed to be analogous under the second tier test of In re Wood, 202 USPQ 171 (CCPA 1971) and the knowledge thereof is therefore charged to applicant. It would have been obvious to one of ordinary skill to provide in Mortvedt et al. breakaway bolts as taught by either Polz et al. or Dent in order to limit damage to the fender upon impacting an object.

14. Claims 5, 21, 42, 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mortvedt et al. in view of Matthew.

Mortvedt et al. uses conventional hex head bolts. It would have been obvious to one of ordinary skill to provide in Mortvedt et al. a quick release fender mounting as taught by Matthew in order to speed transition between ATV with fender and ATV with no fender.

Response to Arguments

15. Applicant's arguments filed 7/25/2005 have been fully considered but they are not persuasive.

Applicant's attempt to render the Mortvedt et al. reference teaching as a non-movable fender is not well taken. Applicant has chosen to quote Column 3, line 25 and ignore the remainder of the disclosure as to for example the pivoting of brackets 22,24 to various positions.

Please see the detailed action above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis H. Pedder whose telephone number is (571) 272-6667.

The examiner can normally be reached on 5:30-2:00.

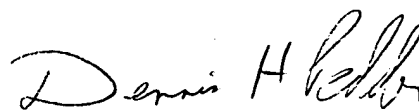
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn D. Dayoan can be reached on (571) 272-6659. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in cursive script, reading "Dennis H. Pedder".

Dennis H. Pedder

Primary Examiner

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8/3/05

DHP

8/3/2005